Assuming the Fifteenth Amendment to be valid,[6] and its application to extend beyond Congressional elections,[7] the state law would be clearly unconstitutional if it expressly made race the test. Practically all white people and practically no negroes in Maryland come within the Grandfather clause. Accordingly that section of the Maryland suffrage statute is held to violate the Fifteenth Amendment. *Anderson* v. *Myers*, 182 Fed. 223 (Circ. Ct., D. Md., Oct. 28, 1910).[8] Nevertheless, a few descendants of free negroes come within the Grandfather clause and a few descendants of white immigrants do not. Laying stress on those facts, the Supreme Court of Oklahoma decided, two days before the federal decision, that a similar provision in the constitution of that state does not take away the right to vote on account of race or color. *Atwater* v. *Hassett*, 111 Pac. 802 (Okla.).[9] Probably no slave was ever entitled to vote in any of the United States.[10] The effect, therefore, of the clause is exactly the same as if it had imposed the stricter requirement upon any person of whom it is not true that he or some of his ancestors were free in this country before 1866, and upon certain other classes of persons. Stated so, it is obviously a discrimination on account of previous condition of servitude, unless the words of the amendment mean the "race, color, or previous condition of servitude" of the person so deprived. Even then, persons who were themselves slaves and who would otherwise have been entitled to vote before 1866 would have constitutional ground for complaint.[11]

This type of Grandfather clause is to be distinguished from that which excepts from the stricter requirements descendants of soldiers or sailors who served in any of the wars of the United States.[12] Whatever may be said of the validity of the latter under other sections of the Constitution, it seems open to no objection based on the Fifteenth Amendment.

DEBENTURE BONDS. — Debentures,[1] as direct charges upon the earnings of a corporation, are products of the industrial development of the

[6] For an ingenious argument against its validity, see 23 HARV. L. REV. 169.

[7] See *id.* 192.

[8] The U. S. Supreme Court has never passed on the validity of the Grandfather clauses. In Giles *v.* Harris, 189 U. S. 475, the plaintiff was not entitled to registration even if the scheme was unconstitutional. See 17 HARV. L. REV. 130.

[9] A possible ground for distinction is to be found in the difference of language used in the two provisions. The Maryland clause excepts "lawful" descendants, whereas the Oklahoma clause excepts "lineal" descendants. It is a fact so notorious that a court might well take judicial notice of it, that many negroes are lineal descendants of men entitled to vote before 1866, and but few of them are lawful descendants of such ancestors.

[10] This point was repeatedly insisted upon by Senator Pritchard arguing in behalf of his resolution to declare the Grandfather clause unconstitutional. The resolution was debated at length in the United States Senate in 1900, was referred, came out of committee a mere resolution to investigate, and expired with the session. 33 CONG. RECORD, *passim*.

[11] One of the plaintiffs in the federal case was born in 1834.

[12] ALA. CONST. (1901), § 180 (lawful descendants); VA. CONST. (1902), § 19 (son).

[1] The word "debenture" is used in at least eight different senses. It will be used here in the sense of a floating mortgage which charges with payment a company's "undertaking, including the good will of the business, and all its property and assets whatsoever and wheresoever, both present and future." Debentures are issued under the authority of four acts of Parliament, the principal ones being the Mortgage Debenture

nineteenth century. With the growth of great commercial undertakings it was soon perceived that the true value of their assets consisted in their earning capacity as a whole rather than in the value of their parts.[2] When it became necessary for them to raise sums of money to develop and improve their resources, it was found that their tangible property was wholly inadequate to float the required amount by mortgage. The English corporations, utilizing debentures, borrowed on their earning capacity directly;[3] but in this country money was raised by large stock issues.[4] Both courses were warranted by the economic conditions of the respective countries. In England debentures gave investors a higher rate of interest than mortgage bonds and a less fluctuating and more permanent form of investment than preferred stock.[5] But in such a rapidly developing country as ours the speculative attraction of stocks, coupled with a variety of other causes, contributed to make debentures unpopular.[6] True debentures are seldom found here, but not infrequently collateral and second mortgage bonds are so misnamed.

But the same considerations that make debentures admirable for large productive corporations whose true assets comprise so much more than their mere physical property, also govern to make them wholly unsuited, both economically and morally, for small concerns or individuals, where their issue could hardly be otherwise than in fraud of the general creditors.[7] This aspect of fraud coupled with the American rule of bankruptcy that intent to defraud creditors is not necessary to constitute a voidable preference has led to the condemnation of debentures as no more than "contracts to give preferences if they should become necessary." [8] But it is submitted that such criticism does not apply to corporate debenture bonds. A corporation's earnings are a definite fund periodically appropriated to the payment of its fixed charges. Hence, the situation created by the issue of corporate debentures is somewhat analogous to the mortgage of an annuity. Financially speaking, the corporation's earnings are just as truly the security behind an American mortgage bond as an English debenture.[9] Only the one reaches it indirectly by charging a lien upon some one asset, while the latter acts directly.[10]

Acts, 28 & 29 VICT. c. 78 and 33 & 34 VICT. c. 20, and the Companies Act, 45 & 46 VICT. c. 43, § 17. They constitute a charge upon the concern but must be registered to do so.

[2] It was the necessity for keeping such corporations going under all circumstances that led to the appointment of receivers with power to issue prior lien certificates. It may be noted that the United States Government registered bonds are in effect debentures. See COOK, CORPORATIONS, §§ 14, 777.

[3] Mortgage bonds, particularly among the railroads, were little used.

[4] The United States Steel Corporation is a typical example.

[5] "The English debenture expresses the real situation more clearly than the American bond." GREENE, CORPORATION FINANCE, 36. "Logically, therefore, the English custom is right and the American custom wrong." LOUGH, CORPORATION FINANCE, 141.

[6] On the reorganization of a company they were always ranked after the mortgage bonds and sometimes even with the general creditors. See, for example, the reorganization scheme of the Central Foundry Company of January 3, 1911.

[7] The issue of debentures by individuals is not provided for by the English acts. But to a limited extent they have become effective under the doctrine of Holroyd *v.* Marshall, 10 H. L. Cas. 191.

[8] See 19 HARV. L. REV. 557 *et seq.*

[9] See GREENE, CORPORATION FINANCE, 33.

[10] As a result of this indirect method it is not unusual for a single corporation to have

But does our legal system recognize a property right created purely by contract in matter not yet in existence? Such a right seems to be recognized by the Roman [11] and the German [12] laws. With the development of equity jurisdiction, property rights arising in and dependent upon executory contracts were gradually enforced. Succeeding generations saw this extended in many directions wherever mercantile convenience demanded it, while in many places such equitable property rights were extended to matter not yet in existence.[13] If, then, a debenture passes a true property right [14] in the earnings to be, it would be more than a contract to give a preference. Now although the English cases generally speak of a debenture as a "floating mortgage," "a charge upon the assets for the time being of a going concern," they substantially recognize that such definitions are self-contradictory and tacitly show that the earnings are what the debenture holder must look to. For they will not let him interfere with the management of the business,[15] or object to any sale,[16] lease, or mortgage [17] of the corporate property done in the course of business. And further a recent English case holds that he cannot, while the concern is running, prevent a garnishing creditor from going off with a specific asset.[18] *Evans* v. *Rival Granite Quarries*, [1910] 2 K. B. 974.

LABOR CONTRACT LAWS AND THE THIRTEENTH AMENDMENT. — Statutes in some states have made the breach of a contract to labor a crime.[1] These statutes have been attacked as obnoxious to the Thirteenth Amendment to the federal Constitution and the legislation thereunder,[2] on the ground that they keep the laborer in involuntary servitude for his master.[3] It is now clear that the Amendment applies to continuance in, as well as entry into, service, and performance of a contract may be in-

outstanding at the same time prior lien bonds, first and second mortgage bonds, equipment, collateral, terminal, and income bonds.

[11] See SALKOWSKI, ROMAN PRIVATE LAW, 484.

[12] See SCHUSTER, PRINCIPLES OF GERMAN LAW, 442 (*Sicherheits-hypothek*).

[13] "In truth although a sale or mortgage of property to be acquired in the future does not operate as an immediate alienation at law, it operates as the equitable assignment of the present possibility which changes into the equitable ownership as soon as the property is acquired by the vendor or the mortgagor." POMEROY, EQUITY JURISPRUDENCE, § 1288.

[14] Iowa, by statute, allows railroads to mortgage their future earnings. Jessup *v.* Bridge, 11 Ia. 572. The Georgia Code, § 1954, allows goods "in bulk, but changing in specific," such as a stock in trade, to be mortgaged. See also Sheffield Furnace Co. *v.* Witherow, 149 U. S. 574; Pennock *v.* Coe, 23 How. (U. S.) 117.

[15] *In re* Borax Co., [1901] 1 Ch. 326.

[16] *In re* Horne and Hellard, 29 Ch. Div. 736; Government Stock and Investment Co. *v.* Manila Ry. Co., [1897] A. C. 81; Biggerstaff *v.* Rowatt's Wharf, [1896] 2 Ch. 93.

[17] *In re* Hamilton's Windsor Iron Works, 12 Ch. Div. 707; Edward Nelson & Co. *v.* Faber & Co., [1903] 2 K. B. 367.

[18] *Accord*, Robson *v.* Smith, [1895] 2 Ch. 118; *In re* Roundwood Colliery Co., [1897] 1 Ch. 373. See also 55 Sol. J. 102, 121, 122.

[1] REV. STAT. N. CAR. (1908), § 3367; CR. CODE S. CAR. (1902), § 357. For similar old English laws, see 1 HOWELL, LABOR LEGISLATION, 2 ed., 38.

[2] U. S. REV. STAT., §§ 1990, 5526.

[3] Aside from constitutional objections to such punishment for breach, some contracts of personal service which tend toward slavery are invalid as against public policy. Parsons *v.* Trask, 7 Gray (Mass.) 473; Clark's Case, 1 Blackf. (Ind.) 122.